

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

AUG 13 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

MCI TELECOMMUNICATIONS CORPORATION )

RM-9108

Billing and Collection Services Provided )

By Local Exchange Carriers for Non-Subscribed )

Interexchange Services )

REPLY COMMENTS  
OF

AMERICA'S CARRIERS TELECOMMUNICATION ASSOCIATION

America's Carriers Telecommunication Association ("ACTA"), by its attorneys and pursuant to *Public Notice*, DA 97-1328 (released June 25, 1997) and the Commission's Rules, hereby submits its Reply Comments in the above-captioned proceeding.

I. INTRODUCTION

On January 17, 1997, ACTA<sup>1</sup> filed a Petition for Declaratory Ruling urging the Commission to declare what Congress clearly mandated with the Telecommunications Act of 1996 ("1996 Act"): that local exchange carriers ("LECs") must provide to interexchange carriers ("IXCs") that use casual calling technologies the information needed to bill end-users for such calls

<sup>1</sup> ACTA is a national trade association of over 200 telecommunications service providers including: facilities-based interexchange carriers, resellers, competitive local exchange carriers, wireless services providers, Internet service providers, enhanced service providers and entities providing products and services in support thereof. Many of ACTA's members rely heavily or exclusively on "dial-around" or casual calling methods for the bulk of their gross income.

-- information which only the bottleneck monopolies possess. In its Petition, ACTA argued that the 1996 Act expressly requires the release of such information. *See* Attachment A, ACTA's Petition, at pp. 5 - 7; *see also* 47 U.S.C. §§ 153(29), 251(c)(3). ACTA reiterated this argument in its Reply Comments pursuant to the Commission's request for public comment. *See Public Notice: America's Carriers Telecommunication Association Filed Petition for Declaratory Ruling Regarding Access to Casual Calling Customer Billing Information*, DA 97-825 (released April 18, 1997). *See* Attachment B. The Act unambiguously declares that "information sufficient for billing and collection" is an unbundled network element that must be provided "to any requesting telecommunications carrier" upon reasonable request "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . . ." *See* 47 U.S.C. § 252(c)(3). Additionally, as ACTA argued in its Petition and Reply Comments, the Commission has long held that a LEC must offer both billing and collection information and billing and collection services to any requesting carrier on a nondiscriminatory basis. ACTA's Petition at pp. 6 - 7 *quoting In the Matter of MTS and WATS Market Structure*, 93 FCC2d 241, 314, 53 RR2d 479, 532 (1983) *aff'd in part sub nom, rem'd in part, NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985). Lastly, ACTA's Petition also asked the Commission to prohibit the entry of a Regional Bell Operating Company ("RBOC") into the in-region long distance arena under Section 271 of the 1996 Act until the RBOC can prove that it is offering billing and collection information as a network element. Several parties filed comments in support of ACTA including MCI

Telecommunications Corp. ("MCI") which simultaneously filed the Petition for Rulemaking ("MCI's Petition") that triggered this proceeding.

## II. ARGUMENT

### A. ACTA Has No Objection to the Commission Using This Proceeding to Decide the Issues Raised in ACTA's Petition.

As stated in its Reply Comments, ACTA does not object to the Commission using this proceeding to decide the issues raised in its Petition for Declaratory Ruling. *See* Attachment B at p. 4. MCI's Petition merely broadens the issues first raised by ACTA and asks the Commission to make a decision in the context of a rulemaking. ACTA chose the Petition for Declaratory Ruling vehicle for the Commission to decide the unbundled network element nature of billing and collection information, such as billing name and address ("BNA"), in the context of the 1996 Act because a Declaratory Ruling offers a more expeditious means to clarifying these issues. *See* Attachment B at pp. 2 - 4. Nonetheless, regardless of the procedural mechanism the Commission chooses to use, ACTA respectfully requests that the entire record of both the ACTA Petition proceeding and MCI Petition proceeding be considered together under an amended caption reflecting the dichotomy. As the Commission has held, and the courts have confirmed, the Commission has broad discretion in choosing the procedures the Commission will use to perform its statutory duties. *See In the Matter of American Telephone and Telegraph Company Petition To Rectify Terms and Conditions of 1985 Annual Access Tariffs*, 3 FCC Rcd. 5071 (1988); *see also Western Union Int'l v. FCC*, 804 F.2d 1280, 1292 (D.C. Cir. 1986); *see also Nadar v. FCC*, 520 F.2d 182, 203 (D.C. Cir. 1975); *see also In the Matter of Preemption of*

*Local Zoning Regulations of Receive-Only Satellite Earth Stations*, 100 F.C.C.2d 846 (1985).

Accordingly, ACTA strongly urges the Commission to render a single decision on the issues raised by MCI and ACTA as soon as possible.

**B. Adoption of ACTA's and MCI's Proposed Rules Would Be Consistent With Commission Precedent and the 1996 Act.**

As stated in its Reply Comments in the ACTA Petition proceeding, ACTA contends that the 1996 Act imposes on incumbent LECs the duty to provide non-discriminatory access to billing and collection information as an unbundled network element:

all "facilit[ies] or equipment used in the provision of a telecommunications service," and all "features, functions, and capabilities that are provided by means of such facilit[ies] or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing or other provision of a telecommunications service."

*Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶ 262 (1996), *motion for stay denied*, 11 FCC Rcd. 11754, *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19734 (1996), *further recon. pending, vacated in part. Iowa Utilities Board v. FCC* (and consolidated cases), Case No. 96-3321, *et al.*, (8th Cir. July 18, 1996), *partial stay granted* 109 F.3d 1418 (1996), *stay lifted in part* (Nov. 1, 1996), *motion to vacate stay denied* 117 S.Ct. 429 (1996). Additionally, ACTA argued that the 1996 Act prohibits the RBOCs from discriminating between an affiliate and any other carrier "in the provision . . . of goods, services, facilities, and information . . ." including billing and collection services and information. *See* 47 U.S.C. § 272(c)(1). In fact, the Commission has already held

that Section 271(c)(1) "establishes an unqualified prohibition against discrimination by a BOC in its dealings with its section 272 affiliate and unaffiliated entities" a prohibition which "extends to any good, service, facility, or information that a BOC provides to its" affiliate and which is *not* limited to "telecommunications-related or . . . common carrier-related 'goods, services, facilities and information'" or "information 'concerning [the BOCs'] provision of exchange access'." *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, FCC 96-489, ¶¶ 197, 217 - 18, 222 (released Dec. 24, 1996), *pet. for rev. pending sub nom. Bell Atlantic v. FCC*, Case No. 97-1067 (D.C. Cir. filed January 31, 1997)(emphasis added).

Furthermore, Section 251(g) of the 1996 Act also requires the BOCs to provide billing and collection services to IXCs on a non-discriminatory basis to the same extent they were required to do so under the Modification of Final Judgment<sup>2</sup>: "each local exchange carrier . . . shall provide exchange access . . . in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations . . . that apply to such carrier on the date immediately preceding the date of enactment of the [1996] Act." Adoption of policies and rules similar to those outlined in both ACTA's and MCI's petitions would be consistent with the Commission's reasoning on this issue in the past. In fact, the Commission has all but explicitly admitted that the current monopoly chokehold on data needed to render effective billing and collection information has not been relieved by competition:

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<sup>2</sup> *See U.S. v. AT&T Co.*, 552 F.Supp. 131, 234 (D.D.C. 1982). *aff'd sub nom. Md. v. U.S.* 460 U.S. 1001 (1983).

only the LECs can provide BNA in accurate, up-to-date form. BNA is generated exclusively by LECs as a byproduct of their provision of exchange access service, and only LECs have the capacity to keep this information current. **Other sources of BNA information . . . are neither as accurate nor as complete as the data maintained by the BOCs.**

*Policy and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, 8 FCC Rcd. 4478 at ¶ 16 (1993) *recon.*, 8 FCC Rcd. 6393 (1993), *further recon.*, 8 FCC Rcd. 8798 (1993), *further recon.* 11 FCC Rcd. 6835 (1996), *aff'd sub nom. AT&T Corp. v. FCC*, Case No. 96-1147 (D.C. Cir. May 16, 1997)(footnotes omitted)(emphasis added). ACTA's and MCI's proposed rules are already supported by these and other precedents. Accordingly, Commission adoption of the proposed rules would be consistent with previous policy.<sup>3</sup>

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<sup>3</sup> As they did in the ACTA Petition proceeding, some commenting LECs have taken a statement out of context from the *BNA Third Reconsideration Order, In The Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information For Joint Use Calling Cards*, Third Order on Reconsideration, 11 FCC Rcd. 6835 (Adopted Feb. 1, 1996), to uphold their arguments. See, e.g., Opposition of Ameritech at p. 12. The rules promulgated in the *BNA Third Reconsideration Order* were the product of a proceeding which focused exclusively on the need for BNA in connection with billing for operator-assisted services such as third-party billed calls, collect calls and calls billed to LEC joint use calling cards balanced against the need to prevent fraud and safeguard privacy. See *BNA Third Reconsideration Order*, 11 FCC Rcd. at 6858, ¶¶ 40 - 42. As the Commission noted in that order, the separate issue of mandatory disclosure of BNA for all IXC traffic (versus the specific calling card and third-party billed traffic which was the focus of the rulemaking) was not before the Commission in that proceeding. *Id.* Nonetheless, to clarify prior rulings, the Commission held that "LECs are only prohibited from disclosing the BNA information associated with calling card, third party, and collect calls when the subscriber affirmatively withholds consent for BNA disclosure." *Id.* at ¶ 40. In that context, which the LECs omitted from their comments in this proceeding, the Commission concluded, "BNA information may be disclosed to the IXC carrying [casual calls] whenever the customer chooses that IXC rather than the one to which the originating loop is presubscribed." *Id.* at ¶ 41. The Commission's rationale was premised on an earlier order in the same proceeding where it determined that BNA is obtained by LECs as part of their provision of common carrier service and such BNA should be provided on a common carrier basis. See *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, 8 FCC Rcd. 4478 (1993)(*Second Report and Order*). Accordingly, the Commission should issue a

**C. Adopting ACTA's and MCI's Proposed Rules Would Be in the Public Interest.**

Several of ACTA's IXC members have received notices from RBOCs unilaterally canceling casual calling billing and collection agreements and/or attempting to impose new terms and conditions on IXCs including new rates that are *twice* the previous rates for the same services.<sup>4</sup> As demonstrated by ACTA, MCI and the Commission itself, LEC-provided billing and collection information and services are the only available option for most IXCs, especially smaller IXCs. The preservation of LEC-billed casual calling options is vital to the continued growth of competition in the interexchange industry. Today, casual calling may surpass 2.5% of the \$80 billion long distance market and it continues to grow rapidly.<sup>5</sup> Desperately trying to enter the long distance arena before true local competition exists, the RBOCs' long distance affiliates undoubtedly have designs on the ever more lucrative casual calling market segment. Having the monopoly on reliable BNA information only strengthens their hand when competing against IXCs of any size. ACTA contends that the BOCs "protest too much" when, on the one hand, they claim that they have no plans to discontinue providing billing and collection services for casual calling customers<sup>6</sup>, and, on the other hand, they issue notices to ACTA's members announcing the discontinuation and/or severe limitation of existing agreements, all the while asking the Commission not to interfere. Accordingly, ACTA agrees with the spirit of MCI's proposal to

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declaratory ruling extending the same logic to BNA for casual calling.

<sup>4</sup> See, e.g., Comments of WorldCom at p. 4.

<sup>5</sup> See John J. Keller, "Coy Telecom Giant Woos AT&T Customers," THE WALL STREET JOURNAL, April 15, 1997, at B1.

<sup>6</sup> See, e.g., Opposition of Ameritech at p.1.

create "a viable and efficient clearinghouse for charges to, and payments from, non-subscribed customers"<sup>7</sup> provided that such a clearinghouse is equally accessible to small and large carriers alike. Once true competition has developed at the local level and in the billing and collection industry, the Commission could consider phasing out such rules if such a transition would not disproportionately harm smaller carriers and, therefore, competition.<sup>8</sup>

### III. CONCLUSION

Accordingly, the Commission should issue a ruling pursuant to either ACTA's or MCI's Petitions adopting rules that require incumbent LECs to provide billing and collection services on a non-discriminatory basis and provide billing and collection information to carriers as an unbundled network element. Such rules could be adopted in a transitional manner.

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<sup>7</sup> MCI Petition at p. 13.

<sup>8</sup> As the Commission decides these issues, it should remember its own recent declarations:

[O]ur goal is to ensure that BOCs do not use their control over local exchange bottlenecks to undermine competition in the new markets they are entering -- interLATA services and manufacturing. The section 272 safeguards, among other things, are intended to protect competition in these markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage.

*Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, FCC 96-489, ¶ 206 (released Dec. 24, 1996), *pet. for rev. pending sub nom. Bell Atlantic v. FCC*, Case No. 97-1067 (D.C.Cir. filed January 31, 1997).




Reply Comments of ACTA  
RM-9108  
August 14, 1997

Furthermore, neither ACTA nor MCI is asking the Commission to re-regulate billing and collection services. Instead, ACTA is asking the Commission to clarify and reiterate prior policy that mandates that such services and/or information be provided in a non-discriminatory manner.

Respectfully submitted,

AMERICA'S CARRIERS  
TELECOMMUNICATION ASSOCIATION

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Dated: August 14, 1997

rmm/070/mcivet

## **ATTACHMENT A**

# STAMP & RETURN

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
INCUMBENT LOCAL EXCHANGE CARRIERS )  
PROVIDING INTEREXCHANGE CARRIERS )  
WITH ACCESS TO CASUAL CALLING )  
CUSTOMER BILLING INFORMATION )  
 )  
AMERICA'S CARRIERS TELECOMMUNICATION )  
ASSOCIATION ("ACTA"), )  
Petitioner )  
 )  
PETITION FOR DECLARATORY RULING )  
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RECEIVED

JAN 17 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

To the Commission:

## PETITION FOR DECLARATORY RULING

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America's Carriers Telecommunication Association ("ACTA"), by its attorneys, submits this Petition for Declaratory Ruling. The purpose of this petition is to ask the Commission to enforce the existing law which requires incumbent local exchange carriers to provide billing information to requesting IXC's that use casual calling methods. Stringent enforcement of this rule is in the best interest of consumers and will strengthen competition in the telecommunications market place. In support of this petition, the following is shown.

## STANDING

ACTA is a national trade association with over 190 members, the core of which are competitive interexchange service providers providing interexchange telecommunications services on an interstate, international and intrastate basis to the public at large.

Other of ACTA's members are underlying (or wholesale) carriers providing network facilities, equipment and services to other member carriers thereby allowing telecommunications services to be resold to the public. Still other ACTA members supply facilities and equipment to member and non-member wholesale and resale carriers.

As described below, many of ACTA's carrier members, as well as AT&T, MCI and Sprint, offer 10XXX or "casual calling" options to end-users to allow the calling public to access networks other than those of their presubscribed carrier. When the 10XXX method of access is used, only the local exchange carrier ("LEC") possesses the information needed to generate bills for such calls. Recently, it has developed that some LECs have failed to announce their plans to stop providing IXC's using 10XXX access with the customer billing information needed to bill and collect for 10XXX calls placed over their networks.

As the appointed representative of its members charged with protecting and advancing their rights and economic interests and in assisting to achieve and maintain their legal and regulatory compliance, ACTA has standing to file this petition.

## JURISDICTION

The Commission has jurisdiction over the interstate and international aspects of the billing and collection ("B&C") issues raised in this petition.<sup>1</sup> 47 U.S.C. § 151 *et seq.* The Communications Act of 1934 states, in pertinent part: "The provisions of this act shall apply to all interstate and foreign communication by wire . . . which originates and/or is received within the United States, and to all persons engaged within the United States in such communication . . . ." 47 U.S.C. § 152(a).

Furthermore, the FCC has exclusive authority over this issue: "[F]or more efficient execution of this policy . . . there is created . . . the Federal Communications Commission . . . which shall execute and enforce the provisions of this chapter." 47 U.S.C. § 151.

Additionally, as explained below, the Commission has an obligation, heightened by the recent enactment of the Telecommunications Act of 1996 ("1996 Act"), to address any activities that may or will circumvent the goals of establishing a fully competitive market. ACTA submits that for the LECs not to provide B&C information to IXCs for casual calling contravenes the letter and spirit of federal communications law and its expansive reliance on increasing competition in the local exchange market. ACTA believes that it is incumbent upon the Commission to declare that, pursuant to the 1996 Act, LECs are required to provide customer billing information related

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<sup>1</sup> Even though the Commission de-tariffed B&C in 1986, it retained its jurisdiction over that service under Title I. *See In the Matter of Detariffing Billing and Collection Services*, 102 FCC 2d 1150, 1171 (1986), *recon. denied*, 1 FCC Rcd 445 (1986). Furthermore, as discussed below, not only *can* the Commission exercise jurisdiction over the LECs' possession of the billing information needed to collect 10XXX calls, but it has a *duty* to ensure the LECs render such information upon request by an IXC. *See* 47 U.S.C. §§ 153(29), 252(c)(3).

to casual calls as part of their long-established legal obligations to provide access and their expanded obligations to provide network elements on an unbundled basis.

### **STATEMENT OF FACTS**

Most long distance consumers obtain access to service through the established presubscription method. Under this arrangement, each carrier receives from the end user credit and payment information used to direct bill that user for the carrier's charges for service. However, a growing number of end users now resort to the 10XXX method of accessing long distance services. With this type of access, the IXC's whose network is used, and for which use its charges are incurred, does not receive any billing information on these 10XXX calls. Rather, only the LEC serving the end user making the 10XXX call has the customer billing information needed for billing such calls.<sup>2</sup> When an IXC provides 10XXX service, it must allow consumers access to its network by "opening" its switch to take all calls. Under this scenario, the IXC is "blind" to the end user's identity and knows only the phone number from which the call originates. Thus, in the 10XXX call environment, the IXC is wholly dependent upon the LEC to provide customer billing information for such calls.

Casual calling methods have become popular with a significant segment of the calling public.<sup>3</sup> Casual calling is most logically viewed as providing consumers with an additional choice by which to complete their long distance calls without the hassle of changing PICs, paying the PIC

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<sup>2</sup> 10XXX calling was originally designed to permit consumers to use an IXC's services on a trial basis without switching to a new primary interexchange carrier ("PIC"), and thereby avoiding PIC change charges imposed by the LECs.

<sup>3</sup> Industry analysts estimate the size of the casual calling segment of the \$76 billion long distance market to exceed \$2 billion.

change charge, or dealing with the constant barrage of remarketing efforts if the former PIC is one of the “Big Three” carriers. Additionally, consumers have more choice in picking the operator service provider they wish to use. The ability to choose a carrier and/or operator service provider takes on an added dimension when interruptions to the primary network are considered. While the reliability of network technology has never been greater nor more secure in terms of internal workings, cable cuts, sporadic overloads and other exogenous factors will continue to beset call completion from time to time. Such interruptions in service require the consumer to access an alternative provider on short notice. Some carriers have chosen to spend millions of dollars advertising their 10XXX capabilities to acquire name recognition and build brand loyalty to compete more effectively. It therefore appears that consumers have a significant stake in the continued availability of the casual calling option.

Should the LEC community make good on its announcements to discontinue providing billing information related to 10XXX calling, IXC's will have little option other than to discontinue offering such services. The main losers in such a situation will be the consuming public who will no longer have this alternative means by which to make long distance calls. IXC's will also be losers by being denied equal access services employed to provide an alternative means by which to provide long distance services to the using public.

#### ARGUMENT

ACTA submits that the 1996 Act expressly mandates that LECs provide the information necessary to bill and collect for 10XXX calls as a network element and, by necessary implication, to continue to provide IXC's with the access services required to offer 10XXX service. The 1996 Act provides:

NETWORK ELEMENT. - The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and *information sufficient for billing and collection* . . .

47 U.S.C. § 153(29)(emphasis added).

In addition, incumbent LECs are required to provide access to unbundled network elements such as B&C information:

UNBUNDLED ACCESS. - The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . . . An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

47 U.S.C. § 252(c)(3).

Even though LECs must provide B&C "to any requesting telecommunications carrier" as a matter of law, many, if not most, are planning on not doing so in the future. Furthermore, the Commission has long held that a LEC must offer B&C to an IXC as an access service:

The MFJ . . . require[s] . . . that if a BOC offers billing and collection services to even one interexchange carrier, that the charge for this service must be in the BOC's access tariff. . . . The hallmark of common carrier service is that it is offered to all indifferently. . . . Consequently . . . we shall require that an exchange carrier offering billing or collection or billing information services to one interexchange carrier must offer them to all.



*In the Matter of MTS and WATS Market Structure*, 93 FCC2d 241, 314, 53 RR2d 479, 532 (1983) (emphasis added) (citations omitted), *aff'd in part sub nom, rem'd in part*, *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985). Congress' mandate in the 1996 Act that B&C information is to be considered a network element subject to availability upon request, reiterates and, more importantly, codifies this rule.

Additionally, Section 271(c)(2)(B) of the 1996 Act prohibits an incumbent LEC from offering in-region interLATA long distance services unless it meets each of the fourteen parts of the competitive checklist including, "[n]ondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B)(ii). Should ILECs be allowed to offer in-region interLATA long distance services without first being required to offer B&C information, they will never have any incentive to do so because of their natural tendency to use their bottleneck facilities and position to limit, discipline or destroy competition.<sup>4</sup>

In conclusion, ACTA submits that based on the 1996 Act, as well as the established policies on equal access and related policies, the Commission should issue a declaratory ruling that:

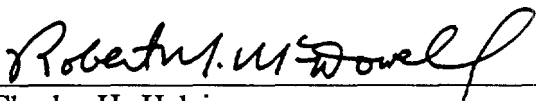
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<sup>4</sup> The Commission should take official notice that it has frequently cited the propensity of the ILECs to resort to anti-competitive behavior if such action serves their ends of retaining their dominance in the changing environment of the competitive telecommunications marketplace. *See e.g.*, Brief of Federal Communications Commission at 15, *Iowa Utilities Board v. Federal Communications Commission and United States of America*, (8th Cir. 1996) (No. 96-3321). It requires little reflection to see the opportunity presented for the ILECs to gain total dominance over 10XXX calling by refusing to provide access to billing information or the network elements necessary for their competitors to continue to provide such services in competition with the ILECs.

1. Casual calling is a publicly beneficial service which is to be provided upon reasonable request therefor;
2. Artificial or unreasonable impediments to the proper provision of casual calling services raise issues under sections 201 and 202 of the Communications Act;
3. The provision of casual calling billing information is a necessary and constituent component of the ILEC's obligations to provide equal access;
4. Based on the foregoing ruling, the refusal to provide casual calling billing information is a violation of the duties imposed by the equal access obligations of the ILECs and a refusal to provide service in response to a reasonable request therefor in violation of Section 1 of the Communications Act;
5. A refusal to provide casual calling billing information to IXC's while providing such service to an ILEC long distance affiliated entity would constitute undue discrimination in violation of Section 202 of the Communications Act;
6. ILECs are required by the 1996 Act to provide information on billing and collection as a network element in accordance with all applicable requirements set forth in the 1996 Act and relating thereto; and
7. Compliance with the duty to provide the information on billing and collection as a network element should be considered a necessary item of the competitive checklist prior to issuance of any approval for RBOC entry into in-region interexchange services pursuant to Section 271 of the 1996 Act.

Based on the foregoing facts, laws and precedents, ACTA requests the Commission to issue the foregoing declarations and to grant such other and further relief as it deems appropriate.

Respectfully submitted,  
AMERICA'S CARRIERS  
TELECOMMUNICATION ASSOCIATION

By:   
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Dated: January 17, 1997

**CERTIFICATE OF SERVICE**

I, Suzanne Helein, a secretary in the law office of Helein & Associates, P.C., do hereby state and affirm that copies of the foregoing "Petition for Declaratory Ruling" were served via first class mail, this 17th day of January, 1997, on the following:

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20554

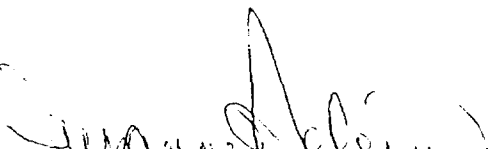
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Commissioner Rachelle B. Chong  
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**ATTACHMENT B**

# STAMP & RETURN

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

INCUMBENT LOCAL EXCHANGE CARRIERS  
PROVIDING INTEREXCHANGE CARRIERS  
WITH ACCESS TO CASUAL CALLING  
CUSTOMER BILLING INFORMATION

AMERICA'S CARRIERS TELECOMMUNICATION  
ASSOCIATION ("ACTA"),  
Petitioner

PETITION FOR DECLARATORY RULING

File No. ENF-97-05

## REPLY COMMENTS OF

PETITIONER AMERICA'S CARRIERS TELECOMMUNICATION ASSOCIATION  
("ACTA")

America's Carriers Telecommunication Association ("ACTA"), petitioner in the above-referenced proceeding, by its attorneys and pursuant to 47 C.F.R. § 1.405, hereby submits its Reply Comments.

### I. INTRODUCTION

On January 17, 1997, ACTA filed the above-captioned Petition for Declaratory Ruling urging the Commission to declare what Congress clearly mandated with the Telecommunications Act of 1996 ("1996 Act"): that local exchange carriers ("LECs") must provide to interexchange carriers ("IXCs") that use casual calling technologies the information needed to bill end-users for

such calls -- information which only the bottleneck monopolies possess. In its Petition, ACTA argued that the 1996 Act expressly requires the release of such information. *See* 47 U.S.C. §§ 153(29), 251(c)(3); *see also* ACTA's Petition at pp. 5 - 7. The Act unambiguously says, "information sufficient for billing and collection" is an unbundled network element that must be provided "to any requesting telecommunications carrier" upon reasonable request "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . . ." *Id.* Additionally, as ACTA argued in its Petition, the Commission has long held that a LEC must offer both billing and collection information and billing and collection services to any requesting carrier on a nondiscriminatory basis. ACTA's Petition at 6 - 7 *quoting In the Matter of MTS and WATS Market Structure*, 93 FCC2d 241, 314, 53 RR2d 479, 532 (1983) *aff'd in part sub nom, rem'd in part, NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985). Lastly, ACTA's Petition also asked the Commission to prohibit the entry of a Regional Bell Operating Company ("RBOC") into the in-region long distance arena under Section 271 of the 1996 Act until the RBOC can prove that it is offering billing and collection information as a network element. Several parties filed comments in support of ACTA. The primary purpose of these reply comments is to respond to those LECs who opposed ACTA's Petition.

## **II. ARGUMENT**

### **A. A Petition for Declaratory Ruling Is the Correct Procedural Vehicle to Resolve This Issue.**

Regrettably, some commenters chose to attack ACTA's Petition on make-believe procedural grounds in lieu of engaging ACTA in a meaningful debate on the merits. Comments

of Bell South at pp. 2 - 5; *see also* Comments of U.S. West, Inc. at pp. 1 - 3. Such a tactic suggests the lack of any material basis for denying interexchange carriers ("IXCs") reasonable access to customer billing information. In any event, their procedural arguments are no more persuasive than is their case on the merits.

A declaratory ruling is the proper procedural vehicle for the Commission to address the issues raised in ACTA's Petition. As the Commission has held, and the courts have confirmed, the Commission has broad discretion in choosing the procedures the Commission will use to perform its statutory duties and has frequently issued declaratory rulings to resolve disputes with respect to the lawfulness of actual or **proposed** carrier actions. *See In the Matter of American Telephone and Telegraph Company Petition To Rectify Terms and Conditions of 1985 Annual Access Tariffs*, 3 FCC Rcd. 5071 (1988); *see also Western Union Int'l v. FCC*, 804 F.2d 1280, 1292 (D.C. Cir. 1986); *see also Nadar v. FCC*, 520 F.2d 182, 203 (D.C. Cir. 1975). Contrary to the self-serving arguments of the monopolies, a declaratory ruling is not restricted, as are proceedings of federal courts, to "cases and controversies." *See In the Matter of Fox Television Stations Inc. Licensee Of Television Station WNYW, New York, New York Request For Waiver of the Broadcast-Newspaper Cross-Ownership Rule Relating to WNYW and the New York Post*, 8 FCC Rcd 5341 (1993). In this context, ACTA need not have alleged a specific misdeed by any local exchange carrier to ask the Commission for a ruling on an area of the law that has not been decided in the context of the 1996 Act. *See infra*. Industry concerns, potential or actual occurrences, and the initial comments of the local monopolies demonstrate the existence of



unresolved issues and constitute a sufficient basis upon which the Commission may issue a declaratory ruling. The LECs, having admitted that they will not provide customer billing and collection information to providers of casual calling services as an unbundled network element under the 1996 Act, absent an order to the contrary from the Commission, provide all the foundation needed upon which to issue a declaratory ruling. Moreover, if the Commission opts for a rulemaking proceeding, it has the discretion to do so. *See In the Matter of Preemption of Local Zoning Regulations of Receive-Only Satellite Earth Stations*, 100 F.C.C.2d 846 (1985). MCI filed a request to that effect with its comments in support of ACTA's Petition.<sup>1</sup> Accordingly, the Commission should ignore the hollow cries from the LEC community to dismiss ACTA's Petition.

**B. Assertions That The Commission Has Already Decided The Issues Raised In ACTA's Petition Are Incorrect and Misleading.**

The RBOCs<sup>2</sup> could not be more incorrect when they argue that in 1996, "after Congress passed the Telecommunications Act of 1996," the Commission held that the disclosure of billing

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<sup>1</sup> Should the Commission decide to consider the issues raised in ACTA's Petition for Declaratory Ruling in the context of MCI's Petition for Rulemaking, ACTA would not object. However, ACTA chose the declaratory ruling route because it offers a potentially more expeditious way to handle the issues of not only billing and collection information but related services as well, as MCI elaborates upon in its pleadings. ACTA supports the substantive arguments raised in MCI's Petition.

<sup>2</sup> ACTA notes that not all of the RBOCs disagreed with its proposition that at least billing and collection information should be provided to IXC's using casual calling methods. Comments of SBC Communications Inc. at pp. 1 - 2, n.3. Even U.S. West admitted that a refusal to provide such information might be a violation of Sections 201, 202 and 153(29) of the Act. Comments of U.S. West at p. 3, n.6.